Environmental Planning in the Army Corps of Engineers

NATIONAL ENVIRONMENTAL POLICY ACT

http://ceq.hss.doe.gov/index.html

http://www.fedcenter.gov/programs/nepa/

National Environmental Policy Act

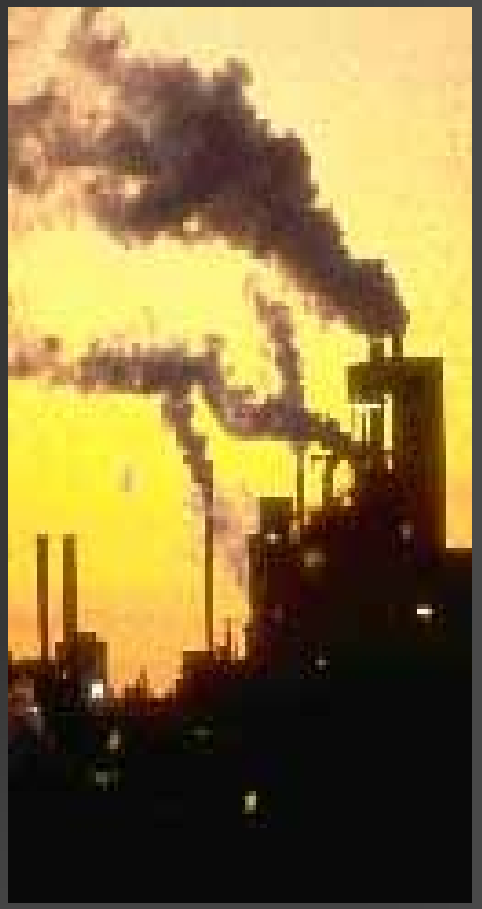
LEARNING OBJECTIVE: The student will acquire a basic understanding of the role the National Environmental Policy Act plays in the Civil Works Planning Process.

National Environmental Policy Act

- NEPA Statute
- NEPA Procedures and Terminology
- NEPA Documents and their Contents
- EPA Review Process
- Relationship of the NEPA to P & G

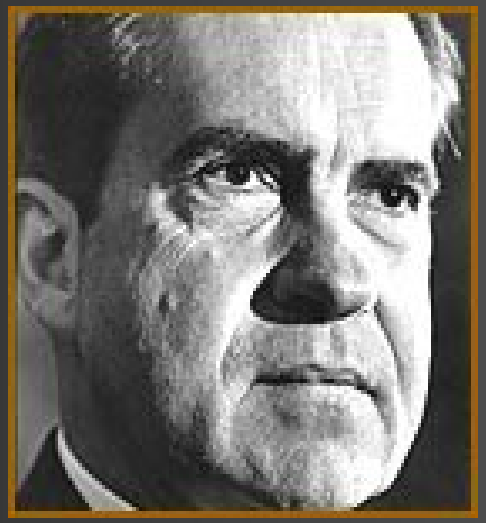
National Environmental Policy Act

- The NEPA Statute
  - History
  - Purpose
  - Overarching Concept
  - Regulatory Context



National Environmental Policy Act

- HISTORY
  - Rachel Carson…’63
  - Cuyahoga River…’69
  - Santa Barbara Oil Spill…’69
  - 1969 Senator Jackson introduced S. 1075
  - Signed by President Nixon 1 Jan 1970.



National Environmental Policy Act

At the Time of NEPA's Final Passage, Senator Henry Jackson Referred to NEPA as –

"the most important and far-reaching environmental and conservation measure ever enacted..."

National Environmental Policy Act

PURPOSE

"…to declare a national policy which will encourage productive and enjoyable harmony between man and his environment…"

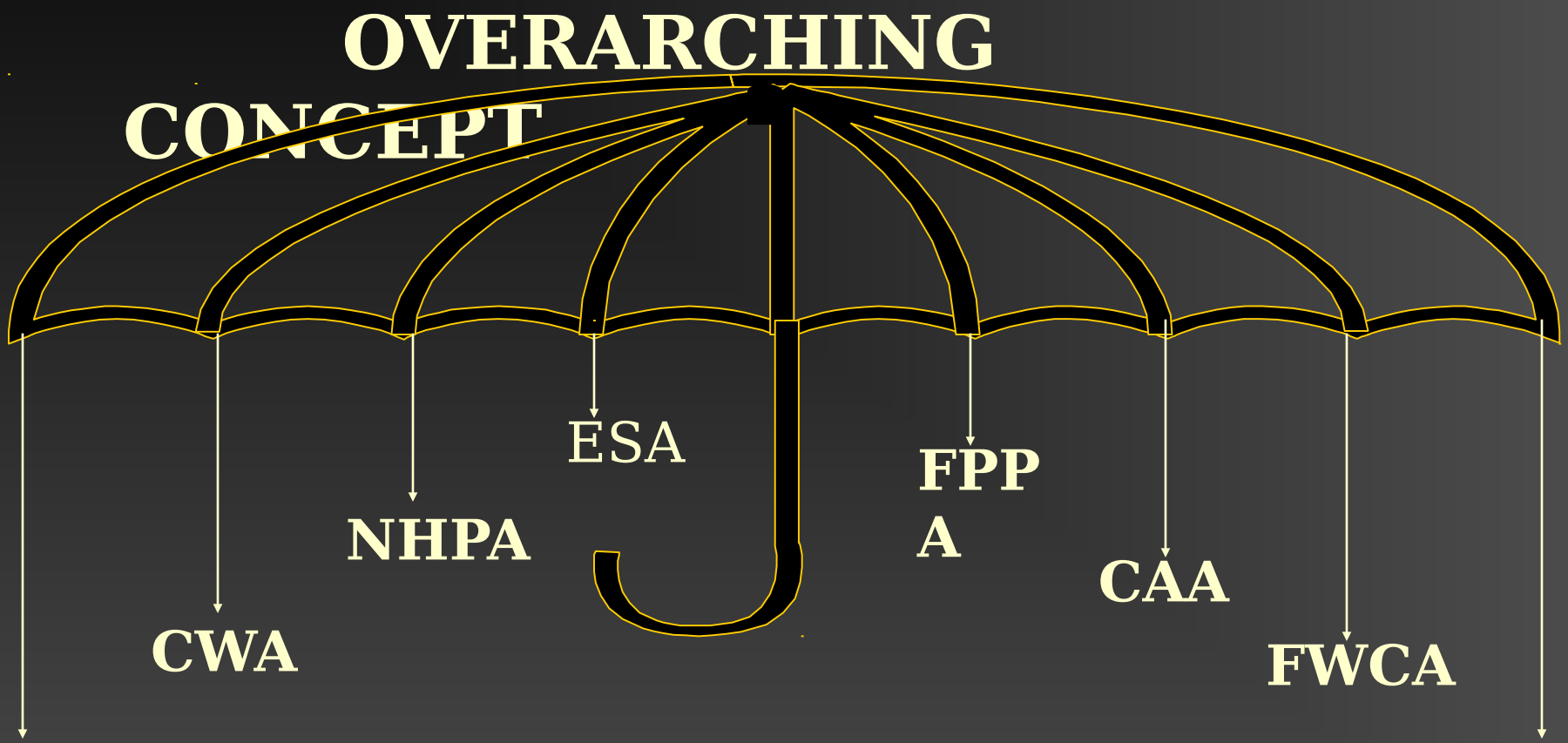
EOPs # 1, 2 & 3

National Environmental Policy Act (Purpose cont…)

- To Promote Efforts that will Prevent or Eliminate Damage to the Environment and Biosphere and Stimulate Human Health and Welfar
- To Enrich the Understanding of the Ecological Systems and Natural Resources Important to the Nation
- To Establish a Council on Environmental Quality (CEQ)

EOPs # 1, 2 & 3

National Environmental Policy Act

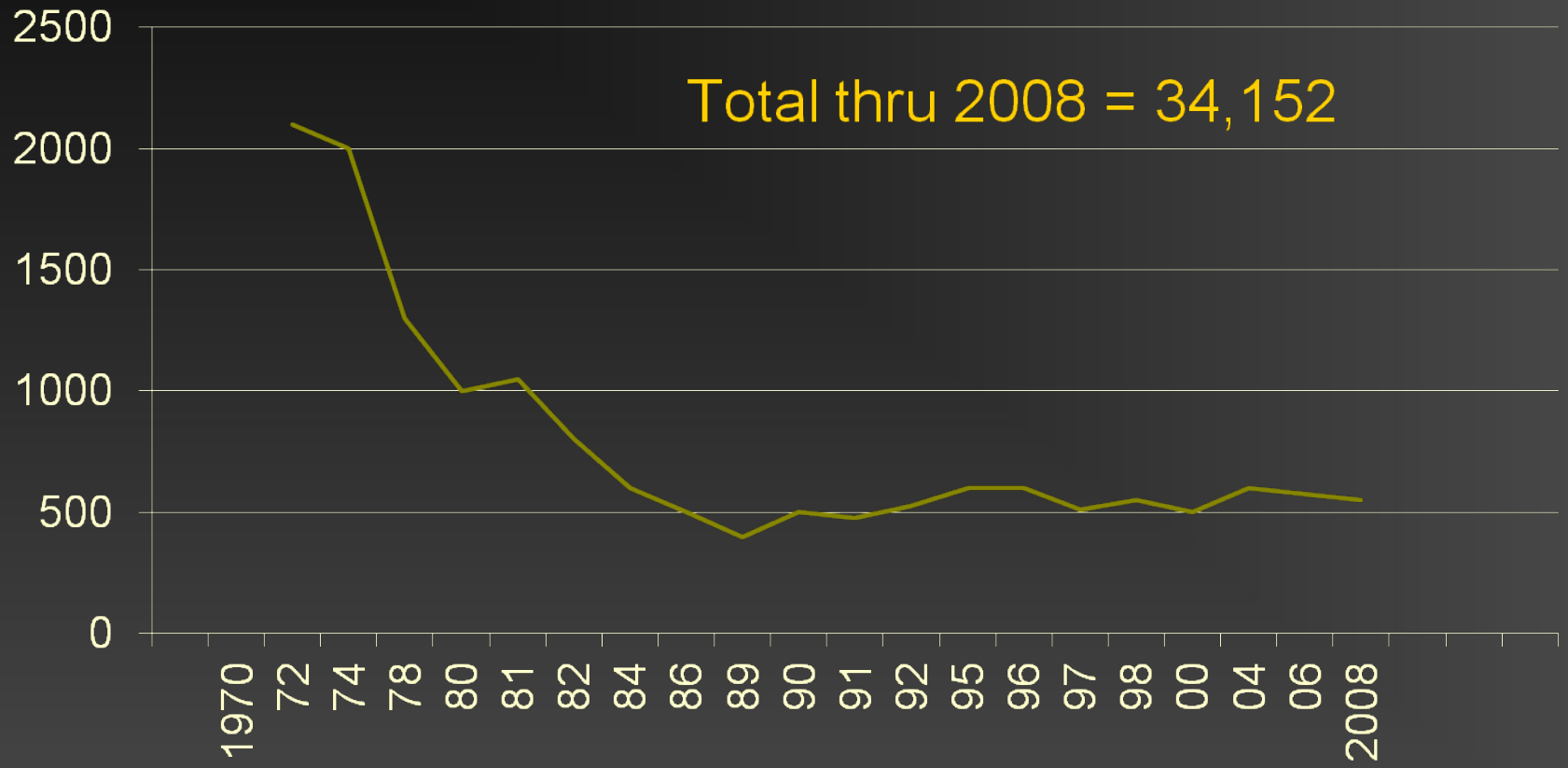


40CFR 1502.25

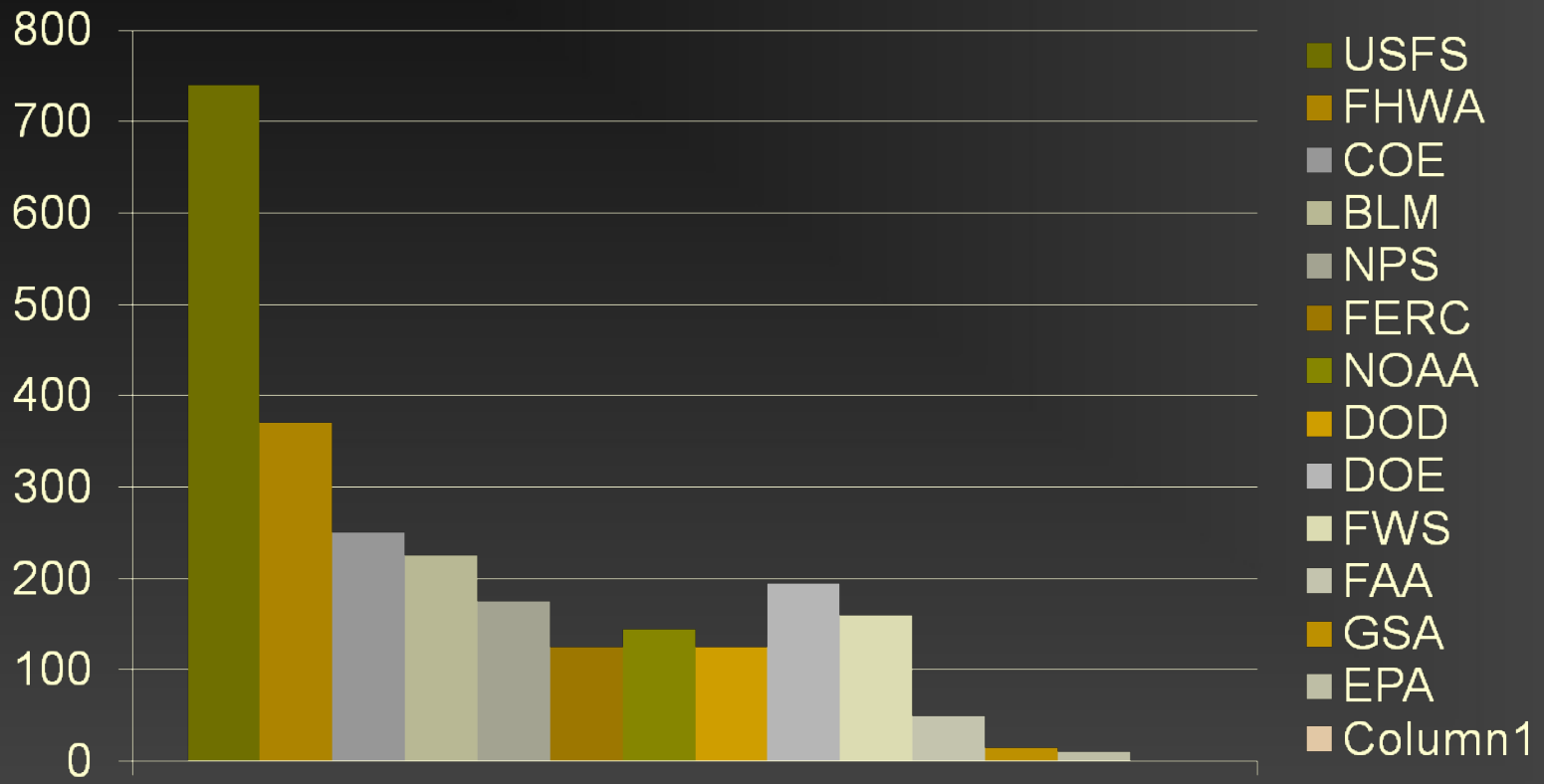
Regulatory Context

- Section 102(2) NEPA “federal agencies shall….”
  - Utilize an interdisciplinary approach.
  - Identify methods and procedures to ensure environmental values are appropriately considered.
  - Prepare a “Detailed Statement” “for Major Federal Actions”.
- These are the Action Forcing Provisions of NEPA.

EISs Issued 1970-2008



EISs Filed by Agency (2004-2008)



Regulatory Context (cont...)

- Section 201 NEPA
  - Created Council on Environmental Quality (CEQ).
    - 3 members, confirmed by the Senate,
      - President appoints chair.
      - Promulgates & interprets NEPA regulations.
      - Adjudicates agency referrals.

Regulatory Context (cont…)

- CEQ's Regulations
  - 40 CFR 1500.1 "CEQ regulations implement Section 102(2) of NEPA." *
  - 40 CFR 1502.1 "purpose of an EIS is to insure… policies and goals of the Act are infused into governmental processes."
  - Not better documents – but better decisions (not more paper).

*Basis for EIS

Regulatory Context (cont...)

- Agency Regulations
  - Section 102 NEPA: “agencies will implement “to the fullest extent possible.”
  - Agencies shall modify existing authorities as necessary to implement the act.
  - Exceptions may exist where expressly designated by law.

Regulatory Context (cont...)

- Section 309 Clean Air Act 1970 established EPA's review authority for an EIS.
- Executive Order 11514 March 4 1970, required agencies to develop implementing "procedures".
  - Does not apply to Congress or Judiciary Branches of Government!

National Environmental Policy Act

Plain Language

NEPA is a law that imposes procedures on agencies to consider the effects of certain government actions on the environment.

National Environmental Policy Act

The Supreme Court

The Supreme Court Has Held that NEPA Does Not Require Agencies to Take the Environmentally Preferable Action; It Only Requires Them to Consider the Effects of Their Actions!

Strycker's Bay Neighborhood Council, Inc. v Karlen, 444 U.S. 223, 227 (1980)

NEPA: Substantive or Procedural

"once an agency has made a decision subject to NEPA's procedural requirements, the only role for a court is to insure that the agency has considered the environmental consequences."

NEPA: The Administrative Procedures Act.

- Courts are directed to uphold an agency decision unless it was "**arbitrary, capricious**, an abuse of discretion, or otherwise not in accordance with law.
- The Court's review under this standard is "highly deferential,"
  - The Court "is not empowered to substitute its judgment for that of the agency."
  - Court Cases: (1) US District Court for NJ: NJDEP V US Army Corps of Engineers and the Philadelphia Regional Port Authority 2011(2) US District Court for ME: Phippsburg Shellfish Conservation Commission V US Army Corps of Engineers, 2011 (3) US Court of Appeals for the 3rd Circuit Delaware Deepening, 2012

NEPA Process

- Authorization to initiate planning of a federal action.
- Determine if the Action is a Categorically Excluded
- Prepare an Environmental Assessment (EA)
- Determine there are No Significant Impacts & sign a FONSI
- Determine there are Significant Impacts & Initiate the EIS Process

Steps in the EIS Preparation Process

- Publish Notice of Intent (NOI)
- Conduct Scoping Process
- Circulate DEIS for Public Reviews & File with EPA
- Respond to Comments & Prepare Final EIS
- Circulate FEIS for Public Review & File with EPA
- Respond to Comments
- Prepare Draft Record of Decision (ROD)
- Submit to Agency Administrative Reviews

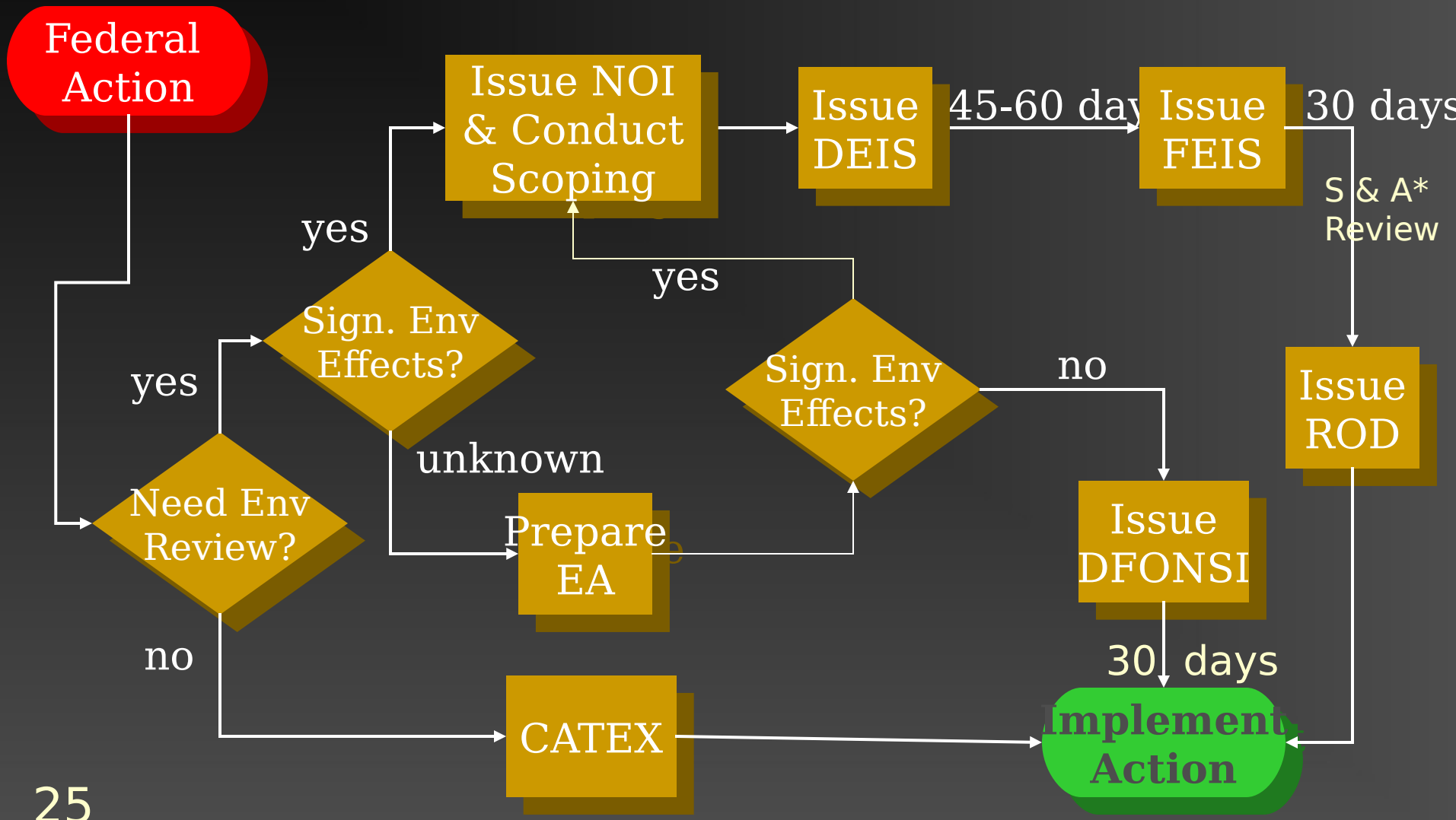
Final Steps or Stops to Process

- Categorical Exclusion –project excluded
- Finding of No Significant Impact (FONSI)
  - Summarizes EA and states why an EIS is not needed
- Record of Decision (ROD)
  - Identify decision, including any mitigation
  - Describe alternatives considered including environmentally preferred alternative
  - Describe considerations in arriving at decision

Completed (signed ROD/FONSI)

- Cannot Award Construction Contract!
- No irretrievable or irreversible commitments of resources.
- No action that may limit the choice of alternatives.
- Can process paperwork, make administrative decisions, etc. (does not include signing of Project Partnership Agreement).

NEPA Process Flow Chart



Take Away Points

- NEPA implements National Policy of productive harmony between man and his environment
- There is an umbrella concept regarding compliance
- Action Forcing Provisions require the preparation of a NEPA document for major federal actions
- A Council on Environmental Quality oversees implementation of the NEPA Process
- NEPA provides for public review/awareness of significant impacts to the human environment resulting from a federal action.

Take Away Points

- The NEPA process begins with a proposed federal action and ends with one of three results
  - CATEX
  - FONSI
  - ROD
- The Corps of Engineers POC for NEPA is Mark Matusiak 202-761-4700